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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

‘ĪLIO‘ULAOKALANI COALITION, a) Civil No. 04-00502 DAE BMK
Hawai‘i nonprofit corporation; NĀ ‘IMI)
PONO, a Hawai‘i unincorporated) PLAINTIFFS’ EX PARTE MOTION
association; and KĪPUKA, a Hawai‘i) TO SHORTEN TIME FOR HEARING
unincorporated association,) STATEMENT OF APPEAL FROM
) MARCH 23, 2007 ORDER DENYING
) PLAINTIFFS’ REQUEST FOR
Plaintiffs,) SUPPLEMENTAL DISCOVERY;
) DECLARATION OF DAVID L.
v.) HENKIN; EXHIBITS “1”-“2;”
) CERTIFICATE OF SERVICE
ROBERT M. GATES, Secretary of)
Defense; and PETE GEREN, Acting)
Secretary of the United States)
Department of the Army,)
)
)
Defendants.)
)

PLAINTIFFS' EX PARTE MOTION TO SHORTEN TIME FOR
HEARING STATEMENT OF APPEAL FROM MARCH 23, 2007 ORDER
DENYING PLAINTIFFS' REQUEST FOR SUPPLEMENTAL DISCOVERY

Plaintiffs ‘Īlio‘ulaokalani Coalition, Nā ‘Imi Pono, and Kīpuka (collectively, “the Hawaiian Groups”) hereby move this Court, ex parte, for an order shortening time for hearing their Statement Of Appeal From March 23, 2007 Order Denying Plaintiffs’ Request For Supplemental Discovery, filed earlier today. The Hawaiian Groups seek an expedited hearing to ensure their appeal is resolved prior to the commencement of Stryker-related training that differs materially from the training the Army previously disclosed and this Court has had an opportunity to review. Today, the Army refused to agree to provide any notice of material changes to the Stryker training it intends to conduct in Hawai‘i, even for the limited time necessary to resolve this appeal. Exh. 2: 4/2/07 Weiner Letter. Thus, unless the appeal is expedited, irreparable harm to cultural sites, endangered species and fragile native ecosystems from previously undisclosed training might occur, without any opportunity for the Court to evaluate that training – which the Army did not previously claim was essential – and determine whether mitigation measures are necessary to “protect[] cultural and environmental resources from harm.” 12/29/06 Order at 56.

The Hawaiian Groups have done their best to try to work with the Army to avoid the need to expedite this appeal. See generally Henkin Dec. On March 28, 2007, in response to the Hawaiian Groups’ inquiries, the Army sent a letter stating it had not yet undertaken, and (as of that time) had no plans to undertake, previously undisclosed Stryker training. Exh. 1: 3/28/07 Gette Fax. The Hawaiian

Groups asked the Army whether, to avoid the need to expedite the appeal, the Army would be willing to give advance notice should, in the future, there be any material changes in its training prior to the Court's ruling, which would give the Hawaiian Groups the opportunity to expedite the appeal, if need be. Henkin Dec. ¶ 5. The parties had reached a similar agreement to avoid the need to expedite the Hawaiian Groups' January 12, 2007 Motion To Clarify and to accommodate the Army's requests for extensions of time to respond to that motion. The Army refused to agree to the Hawaiian Groups' request, necessitating this motion.

Only the Army knows whether, prior to the Court's ruling on the Hawaiian Groups' appeal, it intends to conduct previously undisclosed Stryker training in Hawai'i. If it does, the Hawaiian Groups would be severely prejudiced should potentially destructive training go forward without the opportunity for judicial review to determine if protective measures are necessary.

In light of the unusual circumstances presented by the Army's refusal to be forthcoming regarding its future training plans, the Hawaiian Groups respectfully ask the Court to issue an order to ensure their appeal is resolved prior to the commencement of training in Hawai'i that the Army has not previously disclosed and, thus, this Court has not yet reviewed. This could be accomplished by requiring the Army to file its opposition (1) within the time ordinarily provided pursuant to Local Rule 74.1 or (2) at least one week prior to conducting previously undisclosed Stryker training in Hawai'i, whichever is sooner. The Hawaiian

Groups defer to the Court to determine the most equitable way to ensure their appeal is resolved in a timely manner.

The Hawaiian Groups have contacted counsel for the Army to seek agreement regarding expediting this appeal and were told the Army intends to oppose any motion to shorten time. Henkin Dec. ¶ 8.

This motion is brought pursuant to Rule 7 of the Federal Rules of Civil Procedure and Local Rules 6.2(e) and 74.1 and is based upon the declaration and exhibits attached hereto, the Statement Of Appeal From March 23, 2007 Order Denying Plaintiffs' Request For Supplemental Discovery, filed earlier today, the files and records herein, and such further and additional matters that may be presented prior to the adjudication of this ex parte motion, all of which are incorporated herein by reference.

DATED at Honolulu, Hawai'i, April 2, 2007.

EARTHJUSTICE
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By: /s/ David L. Henkin
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